

REMARKS/ARGUMENTS

This is in response to the official action dated July 21, 2008. Reconsideration is respectfully requested.

Claim rejections under 35 USC § 112

The Examiner rejected Claims 1-9 being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claim 1 and, thus, applicant requests that the Examiner's rejections should be withdrawn.

Claim rejections under 35 USC § 102

The Examiner rejected Claims 1-10 as being anticipated by E.R. Ellis and Associates, Inc. (PCT WO03/086483 A2), hereinafter "Ellis".

In response, Applicant submits that anticipation requires identity of invention. See MPEP 2131. *See also Glaverbel Societe Anonyme v. Northlake Mktg. & Supply*, 33 USPQ2d 1496, 1498 (Fed. Cir. 1995). Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claims. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). There must be no differences between what is claimed and what is disclosed in the prior art reference. *In re Kalm*, 154 USPQ 10, 12 (CCPA 1967.) Moreover, it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference. *Ex parte Levy*, 17 USPQ2d 1461, 1462 (BPAI 1990).

Turning now to the Ellis reference, applicant submits that this reference discloses an automatically controlled way of allowing a medium shaped as moveable shatters to interact with the outside environment. The medium/shatter is made of molded material (such as naphthalene) combined with compressed plastic, cardboard or sawdust. A fragrance material may be bound to the medium material. The medium/shatter fits into a housing having static vents that coincide with the shatters of the medium/shatter. The medium/shatter is fitted into the housing with a coil spring which is engaged at that inner end (the unrestrained end) with the medium. Changes in temperature are registered by the coil spring and thus make possible a movement by the non-

restricted spring end such that the shatters either align with the openings in the static vents or with the spaces between the static vents, thereby closing the housing. In other embodiments, instead of having the medium combined with the shutter, the medium may also be provided beneath the shutter in form of a disk, or in form of a medium contained in a container. The principal operation of having a temperature sensitive spring that rotates the shatter against the static vents of the housing remains the same throughout all embodiments.

Thus, Ellis provides an entirely different technology than applicant, which basically relies on the automatic opening and closing of vent through which, e.g., fragrance (medium) is released. This in complete contrast to the present invention in which the vent involved is not at all a conduit for fragrance (that is, after all, the task of applicant's the wick 5), but for pressure equalization between the reservoir containing volatile liquid fragrance and the atmosphere, thus causing a control of the fragrance emission. In contrast, in the Ellis disclosure, the prevention of fragrance emission is caused by physically blocking the emission vents. In the present invention, prevention is accomplished by preventing pressure equalization and thus stopping evaporation from a porous member which, in contrast to the Ellis fragrance source, always remains open to the atmosphere. As applicant states in his own application where one mode of the Ellis invention is described in the Background/Prior art section: "Some means of overcoming this have been proposed, one being the use of an automatic cover mechanism that gradually separates the evaporative member from the atmosphere as the temperature rises, thus reducing the escape of volatile liquid into the atmosphere. Such a cover is typically operated by some temperature sensitive means (such as a bimetallic strip). This idea is useful, but it has the problem that the cover often does not make a sufficiently gas-tight seal and the loss of liquid is still high (see p.1, of the specification, lines 24-30).

The Examiner further states that Ellis would provide "a porous evaporative member that extends from the liquid into the atmosphere" as applicant claims. Applicant respectfully traverses the Examiner. The Ellis porous evaporative member (, such as item 2 in Figure 1A) is inside a housing 1. Moreover, in this embodiment, there is no liquid reservoir, the medium is contained in the movable shutter 2. As discussed above, the shutters are designed to match exactly with apertures in the outer housing 1. Thus, as the shutter turns, its position with respect to the housing varies between complete matching of the apertures in both housing and shutter

(which means that no emission takes place) to no matching (shutter segments exposed to the atmosphere), yielding maximum emission. Thus, one has the complete reverse of the present invention that is when the housing apertures are closed, maximum emission results. In contrast, when the vent in the present invention is closed, minimum emission is yielded. This is because the vents of Ellis are there for emission, not for pressure equalization. Indeed, in the Figure 1A device of Ellis, pressure equalization would serve no purpose.

Further, the Examiner equated applicant's claim element "the reservoir being directly open to the atmosphere only by means of a pressure equalization vent, which vent is equipped with closing means that obstructs the vent to an increasing degree with increasing atmosphere temperature, optionally closing it completely" with certain disclosures from Ellis.

Applicant again respectfully traverses the Examiner. Applicant respectfully wishes to turn the Examiner's attention to Ellis Figures 2 or 3 A-E. Here, the shutter is only a shutter (and does not include a medium), and there is within the container a separate medium 13 or 19. The medium is released into the atmosphere through the vents 16 and 6 (see p.10, lines 26-30). Accordingly, no porous member extending into the atmosphere and the only vents are there to release the medium, not to equalize any pressure. Applicant points out that the only direct contact of the liquid with the atmosphere is via the pressure equalization vent. The same is true of every other variant in Ellis - they all involve revolving around opening and closing of vents to release or prevent the release of a medium. There is no mention whatsoever of a porous members that extends from liquid into the atmosphere, which is an element in applicants claim, nor is there any mention or recognition of vents for the equalization of pressure and where due to the blocking thereof will reduce or even stop completely the release of medium. Thus, provides an entirely different structure for a different solution and the reference does not anticipate applicants claim 1 and 10. Thus, claim 1 and 10 are not anticipated and thus, are patentable.. Claims 2-9 are dependent on claim 1, either directly or indirectly and they are patentable for the same reasons as claim 1 is patentable.

In conclusion, Applicant respectfully submits that claim 1, as amended is patentable and claims 2-10, as submitted are also patentable for the same reasons as claim 1 is patentable.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,
NORRIS McLAUGHLIN & MARCUS, P.A.

By Christa Hildebrand
Christa Hildebrand
Reg. No. 34,953
875 Third Avenue - 18th Floor
New York, New York 10022
Phone: (212) 808-0700
Fax: (212) 808-0844
Facsimile: (212) 808-0844